

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ESCONDIDO UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2012100368

ORDER GRANTING STUDENT'S  
MOTION FOR STAY PUT

On October 3, 2012, Student filed a motion for stay put. District filed opposition on October 9, 2012.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)<sup>1</sup>; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

The term “related services” (in California, “designated instruction and services”), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).) In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.) However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) transportation in and around school buildings; and (iii) specialized equipment (such as adapted buses, lifts, and ramps), if required to provide transportation for

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<sup>1</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

a child with a disability. (34 C.F.R. § 300.34(c)(16)(2006).) Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).) However, the IDEA requires transportation of a disabled child only to address his educational needs, not to accommodate a parent's convenience or preference. (*Fick v. Sioux Falls School Dist.* 49-5 (8th Cir. 2003) 337 F.3d 968, 970; *Student v. Los Angeles Unified School Dist.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009080646.)

## ANALYSIS

Student, a young man with cerebral palsy, attends preschool at District's Lincoln School (Lincoln) and receives occupational and physical therapy after school at another District school, Orange Glen. Student seeks a stay put order maintaining the "three-stop" transportation provided to Student during the 2011-2012 school year, that is, pick-up from Student's daycare and transportation to Lincoln, pick-up at Lincoln and transportation to Orange Glen, and pick-up at Orange Glen and transportation to Student's daycare. District unilaterally changed Student's transportation to a two-stop schedule for the 2012-2013 school year. The declarations of Mother and Student's guardian state that Student received three-stop transportation through the end of the 2011-2012 school year pursuant to his last agreed-upon and implemented IEP of March 8, 2012, and that picking Student up at Lincoln mid-day to take him to Orange Glen, or picking him up at Orange Glen when he finishes therapy, conflicts with both of their work schedules and will result in Student missing therapy sessions. Student's guardian took an extended leave of absence to drive to accommodate the different four-week 2011-2012 extended school year (ESY) transportation schedule, as well as District's unilateral change of Student's transportation for 2012-2013, but his leave time is about to expire.

District contends that only "transportation" was offered in Student's March 8, 2012 IEP, not three-stop transportation. District does not dispute that three-stop transportation was provided through the end of the 2011-2012 school year, but contends that such transportation was (i) temporary due to an administrative error, and (ii) not expressly provided for in the IEP. The declaration of District program specialist Jessica Mariani states that the March 8, 2012 IEP team agreed to provide transportation for 2012-2013, not specifically three-stop transportation, which Ms. Mariani believes was provided as the result of an "administrative scheduling error." For the 2012-2013 school year, District is currently transporting Student to Orange Glen after school four days each week, and directly to daycare after school one day each week (when Student does not receive therapy), providing Student with the opportunity to attend his therapy sessions with two-stop transportation.

Student's unique combination of transportation services, as implemented under Student's last agreed upon IEP, dated March 8, 2012, through the end of the 2012-2013 school, consisted of three-stop transportation from daycare to Lincoln, Lincoln to Orange Glen and Orange Glen to daycare. There is nothing in Student's March 8, 2011 IEP stating that the transportation referenced in the IEP was temporary, and in fact, the IEP provides for

special education and related services through March 8, 2013.<sup>2</sup> The June 8, 2012 IEP makes no reference to transportation services, and so does not evince an agreement to change Student's transportation services as implemented under the March 8, 2012 IEP.

The exact composition of Student's transportation services are not, and need not necessarily be, stated in Student's IEP, and this order does not make a finding as to whether three-stop transportation is a component of a free appropriate public education (FAPE) for Student. Further, nothing in this Order is based on Parent's assertions of convenience or work schedules necessitating the transportation. Quite simply, Student's transportation stay put can be determined by what District actually implemented prior to the filing of the due process hearing request. Thus, Student's transportation services under the last agreed upon and implemented IEP consisted of three stops, and such three-stop transportation constitutes part of Student's special education and related services program for purposes of stay put.

Student's motion for stay-put is granted. District shall provide three-stop transportation services to Student, as provided from March 8, 2012 through the end of the 2011-2012 school year, pending issuance of a decision in this matter.

IT IS SO ORDERED.

Dated: October 15, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> In contrast, the special education and related services for 2012 ESY are specifically limited to the period July 2 through 27, 2012, and any changes to transportation for that period are not stay-put for the 2012-2013 school year.